Filed 7/25/19 Boyd v. City of Oakland CA1/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

DAVID BOYD, Plaintiff and Appellant, v. CITY OF OAKLAND, Defendant and Respondent.	No. A150432 (Alameda County Super. Ct. No. RG16822868)

David Boyd, appearing in propria persona, seeks reversal of the Alameda Superior Court's denial of his petition for a writ of administrative mandate, brought under Code of Civil Procedure section 1094.5.[1] Boyd owns a residential property on Panoramic Way in the hills of Oakland, California (Property), in a hillside area zoned for residential use only. From approximately 2012 to 2016 he rented the Property for weddings and other group events, including after the City of Oakland (City) told him to stop holding unpermitted commercial group activities on the Property. In 2014, the City issued a "Notice of Violation" citing his unpermitted commercial use of the Property. Boyd filed an administrative appeal and a hearing officer sustained the notice; Boyd nonetheless continued to hold weddings and other events on the Property.

In August 2015, the City Administrator issued a "30-Day Notice to Abate" to Boyd, instructing him to abate a public nuisance on the Property, i.e., "unpermitted group assembly activity," or he would be subjected to civil penalties, including a daily penalty of $500. Boyd filed an administrative appeal. In November 2016, a hearing officer ruled

[1] Further statutory references are to the Code of Civil Procedure.

that Boyd was responsible for a public nuisance and subject to the daily civil penalties assessed, which exceeded $100,000 at that time.

Boyd next filed a petition for a writ of administrative mandamus in superior court, which was denied. He appeals from this denial. We conclude he has forfeited most of his arguments by failing to raise them below. Even if we were to consider them, his arguments lack merit. Accordingly, we affirm.

BACKGROUND

I.

The 2014 Notice of Violation

This dispute began when the City received a complaint that a business was being conducted on the Property in violation of the City's zoning requirements. The City's Department of Planning and Building issued Boyd[2] a "Notice of Violation" in April 2014 (2014 Notice). The 2014 Notice stated that the Code Enforcement Division had inspected the Property and confirmed violations of section 17.13.030 and Table 17.13.01 of the Oakland Municipal Code (OMC), namely the "[o]peration of a Group Assembly Commercial Activity, catering or holding various events at this residentially zoned location (zoned RH-1)" that were neither allowed nor conditionally allowed. The notice advised Boyd to correct these violations before the first re-inspection date (which was listed on the notice) in order to prevent further code enforcement action and charges for inspection and administrative costs.

Boyd appealed. The administrative hearing officer denied Boyd's appeal and sustained the 2014 Notice in a November 2014 written decision (November 2014 Decision). He cited OMC section 17.13.030 and OMC Table 17.13.01 as prohibiting all commercial activities in the residential hillside zone in which the Property was located and noted that OMC section 17.10.030 "specifically defines group assembly commercial activities as the '. . . provision of instructional, amusement, and other services of a similar

[2] The City's notices were also sent to a third party who apparently co-owned the Property with Boyd for a time and was not a party to any of the proceedings we will discuss. Therefore, for simplicity's sake, we refer to Boyd only.

nature to group assemblages of people,' including '. . . banquet halls.' " He found that the Property was being used for the "solicitation of group assemblies such as weddings, conferences or other special events." The evidence included a printout of a website that Boyd admitted controlling entitled "Panoramic Hills." The hearing officer wrote that the website was "replete with references to weddings, conferences and special events for large groups," stated that "we are 'now available as a unique venue for your wedding, a conference or that special retreat' " and that " '[o]ur location can serve up to 200 people,' " and contained statements such as " 'now available as a unique venue for your wedding,' " " '$5,000.00 for a wedding,' " " '$2,500/day for a retreat, conference or event,' " and " '$500/hour' if the event went longer than the agreed upon period." Also, a printout from another website announced a July 2014 wedding on the Property, and a "Yelp" posting "by the property owner" (presumably Boyd) stated the Property had been hosting "social events" since 2012. The hearing officer concluded that the "overwhelming presentation of credible evidence supports a finding and decision that [Boyd] failed to comply with OMC, [section] 17.13.030 *et seq*.," both before and after the 2014 Notice was issued.

II.

The 2015 Notice to Abate

In August 2015, the City Administrator sent Boyd a "30-Day Notice to Abate" (2015 Notice). This 2015 Notice stated that activity was occurring on the Property that was a public nuisance under OMC chapter 1.08 et seq. The nuisance activity included, but was not limited to, the use of the Property for "unpermitted group assembly activity." This violated OMC section 17.13.030 and posed "a serious health and safety risk to the surrounding community." The notice further stated that a "public nuisance shall also exist whenever a condition on a property . . . continues as a recurrent problem."

The 2015 Notice advised Boyd that he was subject to a daily penalty assessment of $500 if he did not act immediately to abate the nuisance and could incur substantial monetary penalties, including daily penalty assessments of $1,000 per day and up to $365,000 cumulatively per year under OMC chapter 1.08 et seq., unless he abated the

nuisance activity within 30 days from the date of the notice letter. Boyd was also assessed a $3,529.00 nuisance case fee pursuant to a master fee schedule. The notice further stated Boyd had 14 days from the date of the notice to implement remedial measures, which included paying all City assessments to date and ceasing and desisting the nuisance activity including, but not limited to, "[i]llegal/un-permitted group assembly activity."

Boyd appealed the 2015 Notice. His counsel submitted a hearing statement in which he argued, among other things, that the City had abused its discretion in issuing the 2015 Notice because of the notice's inadequacy, in that it gave "no explanation what number of people invited to Boyd's home constitute an 'unlawful gathering.' " He also contended the City had failed to respond to requests for a clearer explanation of Boyd's nuisance activity.

A hearing was held before a hearing officer on February 29, 2016, and March 16, 2016. Both the City and Boyd were represented by counsel. Several people testified, including City officials, Boyd and neighbors of Boyd. The hearing on February 29 was continued to March 16 at the request of Boyd's counsel so he could prepare for witnesses the City had not previously disclosed.

At the beginning of the hearing on February 29, 2016, the City submitted the November 2014 Decision, which Boyd's counsel indicated he had previously received from the City. The City indicated it was relying on the decision to argue that Boyd's past and continuing violations of OMC section 17.13.030 constituted nuisance activity that had to be abated and that subjected him to daily fines of $500 under OMC, chapter 1.08. Boyd's counsel argued, among other things, that the notice should be dismissed because the City had not provided "a clear, written description in simple to understand language on the notice of violation," and contended the City had not clarified what it meant by "unpermitted group assembly activity" despite Boyd's several inquiries. He also referred to talks with the City about the possible standards for a conditional use permit, describing the issue as "the number of events and number of people"; and testimony at the hearing indicated the parties had previously discussed whether Boyd could continue with

contracted-for weddings on the Property while seeking a conditional use permit. When the hearing officer asked if the November 2014 Decision resolved the dispute, counsel contended the decision did not handle "the principal problems of the objections to people on the hill and number of events." Also, during the March 16 hearing, the City asserted that Boyd had notice in the form of the November 2014 Decision that he was to stop holding weddings on the Property.

As for evidence presented at the hearing that is relevant to this appeal, an assistant to the City Administrator testified about the use of the Property. He said that a late 2015 news story about the dispute over the Property resulted in his and other staff's emails and voicemails becoming "inundated from frantic calls . . . from brides, grooms, make-up artists, coordinators, and parents of brides and grooms who were concerned about their contracts they had agreed to with Mr. Boyd to use his property for a wedding in 2016 or at some point in the future." He understood the Property continued to be used for an unpermitted use after the November 2014 Decision because of "complaints from neighbors, various websites where couples literally document the fact that they had a wedding at [the Property]," the emails he received in the latter part of 2015 and Boyd's admission in response to a subpoena that since November 2014 13 paid events had taken place on the Property at rents ranging from $2,500 to $5,000. The City introduced into evidence, without objection, copies of websites referring to over 25 sizeable weddings, including receptions, held at the Property. These included four weddings on separate, specific dates in 2014, fourteen weddings on separate, specific dates in 2015 and six weddings on separate, specific dates in 2016.

A neighbor to the Property testified that she walked up the road to the Property daily and had seen "Porta Potties" and trucks clearly associated with party supplies. Another neighbor testified that he had been disturbed by loud noise from the Property that shook his house, and that he had counted nearly 30 events occurring on the Property in 2015. These events, which usually took place on the weekend, were accompanied by catering trucks, party event trucks and "large bus-type vehicles" going up "a very narrow, windy road" to the Property, resulting in traffic congestion, and the setting up of PA

systems and the playing of music late into the night. The City also introduced a November 2015 letter from another neighbor complaining of "gridlock and possible impassible conditions" in the area around the Property.[3]

Boyd testified at the hearing on both February 29, 2016, and March 16, 2016. He admitted he "had a lot of group assemblies" on the Property, including weddings that were held after the November 2014 Decision. He was "not going to agree" with that decision because he did not think the events "were commercial." He also viewed the November 2014 Decision as applying to only one specific occasion in April 2014 and as not applying to weddings. Although he understood he "[c]ould not have commercial activities," specifically, "[n]o weddings" after the 2014 administrative ruling, he had continued to book weddings on the Property, and had about 20 weddings booked there for the rest of 2015. He was "of the opinion that [he was] renting [the Property] out like an Airbnb rental," and that "anyone on the Hill can have a party there, and any renter on the Hill can have an event there or a family reunion."

In his closing brief, Boyd argued that (1) the November 2014 Decision was irrelevant to his administrative appeal because it addressed different activities; (2) he would have prevailed had he appealed the November 2014 Decision; (3) the 2015 Notice did not sufficiently describe what activity violated the OMC; (4) civil penalties were only permitted for violations that occurred on the Property and, presumably, not for merely advertising on his website; and (5) the hearing officer should take judicial notice of a 2010–2011 grand jury report regarding the City's enforcement of its Building Code.

The City responded that (1) weddings held on the Property violated OMC section 17.13.030; (2) the November 2014 Decision was binding; (3) the $500 per day fine was not subject to change in the administrative appeal; and (4) the $500 per day fine was not excessive.

[3] Boyd refers to the "unsubstantiated 'hearsay' " nature of some of the evidence introduced at the hearing, but he did not object to the admission of the evidence we discuss in this opinion.

The hearing officer issued a written order on April 13, 2016. He stated that the November 2014 Decision was "clear, and final." He found that Boyd had continued to advertise and hold "weddings, etc." on the Property after receiving the November 2014 Decision and even after receiving the 2015 Notice. He concluded these events were commercial activities prohibited under OMC section 17.13.030 because they involved uses of the Property as a " '[b]anquet hall[],' which were 'group assembly commercial activities' as defined by OMC, section 17.10.380 [*sic*]." Thus, Boyd was in violation of OMC chapters 17.13 and 1.08.

The officer also confirmed that Boyd was subject to the civil penalties assessed by the City. He referred to the evidence that Boyd had grossed between $32,500 and $65,000 for just the 13 events that Boyd admitted had been held on the Property since November 2014. The officer rejected the argument that the daily civil penalty should be assessed only for each unpermitted *event* because that "would only reduce the profitability of the activity" in light of Boyd's substantial earnings for each event. He found it appropriate to impose a $500 penalty per *day* in order "to abate the nuisance, not just tax it." Boyd was ordered to pay $103,529, consisting of $100,000 in daily penalties of $500 that had accrued from 30 days after the issuance of the 2015 Notice, and a $3,529 nuisance case fee.

III.

Boyd's Petition for a Writ of Administrative Mandamus

In September 2016, Boyd filed a writ of administrative mandamus under section 1094.5 in Alameda County Superior Court challenging the April 13, 2016 administrative appeal order. Boyd alleged that the hearing officer abused his discretion in imposing the civil penalties for violations not occurring on real property; improperly took into consideration the 2014 Notice, which was not relevant; assessed a daily penalty although there was no evidence of daily violations occurring on the Property; exceeded the limitations of the ordinance and ignored the law; and failed to rule on Boyd's claim that the 2015 Notice provided him with insufficient notice of the basis for its public nuisance declaration.

In opposition, the City argued that the hearing officer proceeded in the manner required by law, his findings were supported by substantial evidence and Boyd's remaining arguments also failed.

The court issued a tentative ruling that, based on the definitions of "violation" and "public nuisance," the penalty assessment factors in OMC sections 1.08.060(E) and 1.08.040, and Boyd's "continued and defiant solicitation and advertising" of the Property as a commercial wedding and special events venue, the hearing officer's interpretations of OMC chapter 1.08 et seq. and the assessment penalty were "justified." Neither Boyd nor the City contested the court's tentative ruling. The court adopted it as its final order and denied Boyd's petition.

Boyd's filed a timely notice of appeal from the court's order.

DISCUSSION

Boyd argues that we should reverse the superior court's denial of his section 1094.5 petition because the superior court applied the wrong standard of review; the 2015 Notice did not comply with the requirements of the governing notice ordinance; and the activities held on the Property did not violate chapter 17.13 of the OMC. Before addressing these claims, we first discuss our standards of review.

I.

Standards of Review

As a party appearing in propria persona, Boyd "is entitled to the same, but no greater, consideration than other litigants and attorneys." (*Nelson v. Gaunt* (1981) 125 Cal.App.3d 623, 638, followed in *County of Orange v. Smith* (2005) 132 Cal.App.4th 1434, 1444.) Further, we will disregard factual contentions not supported by citations to the record (see *Grant-Burton v. Covenant Care, Inc.* (2002) 99 Cal.App.4th 1361, 1379) or based on information that is outside the record. (See *In re Stone* (1982) 130 Cal.App.3d 922, 930, fn. 9 [transcript not in evidence before the trial court was outside the scope of the appellate court's review].)

" 'Section 1094.5 of the Code of Civil Procedure provides the basic framework by which an aggrieved party to an administrative proceeding may seek judicial review of

any final order or decision rendered by a state or local agency.' [Citation.] 'In reviewing administrative proceedings under section 1094.5 that do not affect a fundamental right, such as an attempt to obtain a license to engage in a profession or business, the trial court reviews the whole administrative record to determine whether the findings are supported by substantial evidence and whether the agency committed any errors of law. [Citations.]' [Citation.] 'Our scope of review on appeal from such a judgment is identical to that of the trial court.' [Citation.]

" 'Under the substantial evidence test, the agency's findings are presumed to be supported by the administrative record and, in both the trial court and here on appeal, it is the petitioner/appellant's burden to show they are not. [Citations.] We " 'do not reweigh the evidence; we indulge all presumptions and resolve all conflicts in favor of the [agency's] decision. Its findings come before us "with a strong presumption as to their correctness and regularity." [Citation.]' " [Citation.] When more than one inference can be reasonably deduced from the facts, we cannot substitute our own deductions for that of the agency. [Citation.] We may reverse an agency's decision only if, based on the evidence before it, a reasonable person could not have reached such decision. [Citations.]' " (*Poncio v. Department of Resources Recycling & Recovery* (2019) 34 Cal.App.5th 663, 668–669 (*Poncio*).)

On questions of law arising in mandate proceedings, courts exercise independent judgment, with the superior court and appellate court performing the same functions. (*Christensen v. Lightbourne* (2017) 15 Cal.App.5th 1239, 1251 (*Christensen*).) That is, we apply our independent review without deference to the lower court's rulings. (*Ibid*.)

Boyd does not claim, and we see no indication, that the November 2014 Decision implicates any of his fundamental rights. (See, e.g., *Siller v. Bd. of Supervisors* (1962) 58 Cal.2d 479, 484 [denial of a zoning variance does not affect a vested right of the applicant]; *Saad v. City of Berkeley* (1994) 24 Cal.App.4th 1206, 1212–1213 [denial of permission to construct a single-family home on a residential lot did not implicate a fundamental vested right].) Therefore, we review his claims regarding the City's factual

findings for substantial evidence and review de novo his claims that the City committed errors of law.

II.

Boyd's Claim That We Should Reverse Because the Superior Court Applied the Wrong Standard of Review Lacks Merit.

Boyd first argues we should reverse the denial of his petition because the superior court wrongly applied a "differential" standard of review in its evaluation of the 2015 administrative appeal, by which we understand him to mean that the superior court incorrectly applied a "deferential" standard of review. He asserts the superior court was required to "review the administrative record, including the relevant sections of the [OMC] and make a *de novo* interpretation" because the court found the hearing officer's interpretation of the OMC and the penalty assessed to be "justified." The only legal authority he cites is *Bowman v. Petaluma* (1986) 185 Cal.App.3d 1065, 1070, and he does not explain *Bowman*'s relevance to his circumstances.

Boyd's argument is not a basis for reversal for two reasons. First, the standard of review applied by the superior court is of no consequence in this appeal. Regardless of the standard of review applied by the court below, we review the 2015 administrative appeal independently. Therefore, regardless of the superior court's conclusions, we determine whether substantial evidence supports the administrative findings and conduct a de novo review of any questions of law. (*Poncio, supra*, 34 Cal.App.5th at p. 669; *Christensen, supra*, 15 Cal.App.4th at p. 1251.)

Second, Boyd does not show that the superior court applied an incorrect standard. He merely refers to its conclusion that the administrative rulings were "justified" and cites *Bowman v. Petaluma*. The court's conclusion, however, is an appropriate one for either a substantial evidence or de novo review, each of which the court was required to employ depending on whether it was reviewing factual findings or questions of law. (*Poncio, supra*, 34 Cal.App.5th at p. 669; *Christensen, supra*, 15 Cal.App.4th at p. 1251.) Nothing in *Bowman v. Petaluma* indicates otherwise.

To the extent Boyd may be arguing that the superior court deferred to the City on questions of law, the record refutes any such claim. The superior court's order indicates it independently reviewed the meaning of the relevant ordinances, referring specifically, for example, to its review of OMC sections 1.08.040 and 1.08.060(B), (C), (D) and (E). The court expressly stated that it had "independently reviewed the ordinances involved and interprets them similarly to [the hearing officer]." The superior court also cited to specific, credible evidence to support the factual findings of the hearing officer.

In short, Boyd's argument that we must reverse because the superior court employed an improper standard of review lacks merit.

III.

Boyd's Claim That the 2015 Notice Did Not Meet the Requirements of the Governing Ordinance

Boyd next argues that the 2015 Notice does not meet the requirements of OMC section 1.08.050(D), regarding notice of the nature of the major violations, their dates and locations and the remedial actions required to correct them. We agree with the City that Boyd has forfeited this argument by failing to raise it in the administrative hearing or in the superior court. In any event, his argument lacks merit.

A. Boyd Has Forfeited His Notice Claim.

The failure to timely assert a right generally results in forfeiture. (*Keener v. Jeld-Wen, Inc*. (2009) 46 Cal.4th 247, 264.) The forfeiture doctrine "is designed to advance efficiency and deter gamesmanship." (*Ibid*.) Its application "is equally appropriate in the context of an appeal taken from an order granting or denying a writ petition." (*M.N. v. Morgan Hill Unified School Dist*. (2018) 20 Cal.App.5th 607, 632 [in a writ of mandate action under section 1085, statute of limitations claim forfeited for failure to first raise it in the superior court], citing *Zubarau v. City of Palmdale* (2011) 192 Cal.App.4th 289, 306; see *Moore v. City of Los Angeles* (2007) 156 Cal.App.4th 373, 382–383 [in a writ of administrative mandate action under section 1094.5, statute of limitations defense forfeited for failure to raise it in the administrative proceeding].)

Boyd contends the 2015 Notice does not meet the specificity requirements of OMC section 1.08.050(D). He does not establish that he raised this claim in the administrative appeal or in the superior court, and we have not found any references to it in those proceedings. Rather, in the administrative appeal, he merely argued that the 2015 Notice was insufficient, such as because it gave "no explanation what number of people invited to his home constitute an 'unlawful gathering,' " and contended the City had failed to respond to requests for a clearer explanation. At no time did he claim the notice did not meet the requirements of OMC section 1.08.050(D).

In the superior court, Boyd argued that the 2015 Notice was insufficient because it relied on a claim of nuisance that did not exist at the time of the administrative ruling on the 2014 Notice and complained that the administrative hearing officer in 2015 should have ruled on his claim that the notice was insufficient and did not. Again, at no time did he claim the 2015 Notice did not meet the requirements of OMC section 1.08.050(D). Therefore, he has forfeited this claim.

B. Boyd's Notice Claim Lacks Merit.

Even if we were to consider the merits of Boyd's notice claim, we would reject it for two reasons.

OMC section 1.08.050(D)[4] states in relevant part, "[t]he assessment notice shall *minimally* identify the following factors: [¶] 1. [t]he provisions of the code or ordinance violated and the descriptive nature of the major violations; [¶] 2. [t]he locations of the major violations and the dates of occurrence; [and] [¶] 3. [t]he remedial actions required to correct the violations wholly and permanently and the time constraints for commencing and completing the corrections." (Italics added.)

We interpret municipal ordinances like we interpret statutes. (See *City of Monterey v. Carrnshimba* (2013) 215 Cal.App.4th 1068, 1082.) First, we look to the

[4] OMC, chapter 1.08 is not contained in the record. We take judicial notice of it under Evidence Code sections 452, subdivision (b) and 459, subdivision (a) as it is stated on July 24, 2019, at the following City of Oakland website: <https://library.municode.com/ca/oakland/codes/code_of_ordinances?nodeId=TIT1GEPR_CH1.08CIPE>.

words of the statute, i.e., the plain meaning of the statute and, if that does not resolve the issue, we may look to interpretive rules, extrinsic aids and reason, practicality and common sense. (*MacIsaac v. Waste Management Collection & Recycling, Inc.* (2005) 134 Cal.App.4th 1076, 1082.)

Boyd argues the 2015 Notice did not meet the specificity requirements of OMC, section 1.08.050(D) in three respects: the notice's reference to "Unpermitted Group Assembly Activity" did not adequately describe the nature of the major violations; without an adequate description of the nature of the major violations, Boyd could not take remedial action; and the 2015 Notice does not state the dates when major violations occurred.

His claims about the nature of the violations and the remedial action he was to take lack merit because section 1.08.050(D) requires "minimal" notice only. "Minimal" means "extremely small; very slight, negligible; constituting a bare minimum, only just adequate." (Oxford English Dict. Online <http://oed.com> [as of July 24, 2019].) In the context of this case in particular, "Unpermitted Group Assembly Activity" adequately identified the nature of Boyd's "major violations." The City's zoning ordinances prohibit "Group Assembly Commercial Activities," including activities in "[b]anquet halls." (OMC, § 17.10.380.) Further, the phrase "Unpermitted Group Assembly Activity" in the 2015 Notice was similar to that used in the November 2014 Decision, in which it was specifically determined that Boyd used the Property to solicit and hold unpermitted "group assembly commercial activities," such as activities in banquet halls, thereby violating OMC section 17.13.030. The violations found were based on Boyd's website advertising the property for rental for weddings, conferences and other special events for large groups. In this context, the 2015 Notice, by referring to "Unpermitted Group Assembly Activity," provided the minimal identification of the nature of the violation required by OMC section 1.08.050. For the same reason, the notice was adequate to apprise him of what steps he had to take to remediate the nuisance, which was to cease offering and leasing the property for weddings and other large gatherings.

Boyd's third claim—that the 2015 Notice was inadequate because it did not minimally identify the dates of the violations' occurrence—may have more merit. Nonetheless, Boyd cites no legal authority establishing that any such deficiency in the notice requires reversal or show he was prejudiced in any way by the City's failure to list specific dates of violations in the 2015 Notice.

Indeed, the record indicates Boyd had actual notice of the events on the Property that the City was challenging. Counsel's arguments and testimony at the administrative appeal hearing indicated that in the months prior to the hearing the parties had discussions about contracted-for events that were to be held on the Property. On the first day of the administrative appeal hearing, February 29, 2016, the City indicated it was relying on the November 2014 Decision and Boyd's continuing violation of that decision for its determination that Boyd was engaging in nuisance activity, and Boyd's counsel indicated the City had sent him that decision before the hearing. Also to support its nuisance contentions on that first day, the City specifically cited Boyd's own admission that he had held 13 events for money on the Property since November 2015 and introduced copies of websites showing weddings had occurred, or were scheduled to occur, on the Property on 24 separate, specific dates from 2014 through 2016. Because the hearing was continued to March 16, 2016, at Boyd's counsel's request for other reasons, Boyd plainly had time to respond to the City's stated reliance on the November 2014 Decision and this evidence (and in any event, Boyd's counsel did not seek a continuance based on these matters). In short, Boyd had sufficient actual notice that the City's concerns focused on Boyd's continuing violations of the November 2014 Decision and the weddings that continued to be held on the Property.

IV.

Boyd's Claim That He Did Not Engage in Commercial Group Activity

A. Boyd Has Forfeited His Claim That He Did Not Violate the OMC.

Boyd next argues that contrary to the City's assertion, he did not engage in commercial group activity that violated OMC, chapter 17.13. The City argues that he has

forfeited this argument by failing to first raise it below. We agree with the City. In any event, Boyd's claim lacks merit.

Boyd did not argue in superior court or in his 2015 administrative appeal that the group activities conducted on the Property did not violate OMC, chapter 17.13. Rather, he made other arguments, such as that "the material factual disputes raised by [the 2014 and 2015 notices were] wholly different" and that the "events subsequent to the 30-day [notice] period" covered by the 2014 Notice "constitute[d] new violations of the relevant codes." These arguments are different from his present claim, which is based on his contention that weddings and other events are permitted as activities accessory to residential activity and therefore are not commercial activity under the OMC. Because Boyd did not raise this argument in the superior court or in his administrative appeal, he has forfeited the right to raise it now.

B. Boyd's Claim That He Did Not Violate OMC, Chapter 17.13 Lacks Merit.

Boyd argues that a tenant holding a private event on the Property does not make the activity commercial, and notes that OMC, chapter 17.13 permits accessory activities including "such activities as are customarily associated with, and are appropriate, incidental, and subordinate to, such principal activity." He essentially contends that he merely rented the Property as permitted, and that his tenants then conducted accessory activities to their renting of the Property. In making this argument, Boyd selectively refers to certain OMC provisions and ignores others. Further, substantial evidence supports the conclusion that he engaged in activity in violation of the OMC.

Section 17.13.030 establishes land use regulations for four zones including the RH-1 Zone, in which the Property is located. It prohibits "*all*" commercial activity in RH-1 zones. (OMC, § 17.13.030, italics added.) OMC, section 17.10.030 defines "Group Assembly" as "Commercial Activities." "Group Assembly Commercial Activities" include, but are not limited to, activities in banquet halls. (*Id.*, § 17.10.380.)

Boyd argues that any weddings or other events held by his tenants during their stay on the Premises as a short-term renter are accessory activities to residential activity. He relies on OMC, section 17.10.040, which states that "[i]n addition to the principal activities expressly included therein, each activity type shall be deemed to include such activities as are customarily associated with, and are appropriate, incidental, and subordinate to, such principal activity; are located on the same lot as such principal activity except as otherwise provided . . . ; and meet the further conditions set forth hereinafter."[5] "Accessory," as an adjective, is defined as "Of a thing: contributing as an adjunct or in a minor way; subsidiary; auxiliary; supplementary." (Oxford English Dict. Online (2019) < http://oed.com > [as of July 24, 2019].)

Boyd's argument that weddings and conferences are "accessory activities" to residential use is, in the context of the facts here, upside down. A wedding does not "contribut[e] as an adjunct or in a minor way" to spending a week or a weekend at a rental property. Hardly. Rather Boyd rented the property specifically to enable commercial activities, including weddings, conferences and retreats. These were expected to be the *principal* activities, not accessory activities to mere residential use. The Property's use for these activities was akin to "banquet halls" as described in OMC section 17.10.380.

The evidence demonstrating this included Boyd's maintenance of a website that was "replete with references to weddings, conferences and special events for large groups" that can " 'serve up to 200 people,' " and which included pricing quotes of " '$5,000.00 for a wedding,' " " '$2,500/day for a retreat, conference or event,' " and " '$500/hour' " if the event went longer than the agreed upon period. It also included a neighbor's testimony that these events, usually weekend affairs, were accompanied by catering trucks, party event trucks and "large bus-type vehicles." Further, during the

[5] OMC section 17.10.040 is not contained in the record. We take judicial notice of it under Evidence Code sections 452, subdivision (b) and 459, subdivision (a) as it is stated on July 24, 2019, on the following City of Oakland website: <https://library.municode.com/ca/oakland/codes/planning_code?nodeId=TIT17PL_CH17.10USCL_ARTIGECLRU_17.10.040ACAC>.

2015 administrative appeal hearing, Boyd admitted to having "a lot of group assemblies" on the Property, including weddings, which he understood had previously been found to be commercial activity. Testimony by neighbors indicated the events on the Property were numerous, loud and created traffic congestion, and a letter from another neighbor complained of gridlock and possible impassable conditions around the Property. This evidence further demonstrated the events conducted on the Property were of a larger scale than activity accessory to mere residential rental activity.

For these reasons, we are of the view that Boyd's claim that he did not act in violation of OMC, chapter 17.13 et seq. lacks merit.

DISPOSITION

The order appealed from is affirmed. The City is entitled to recover its costs of appeal.

STEWART, J.

We concur.

KLINE, P.J.

RICHMAN, J.

Boyd v. City of Oakland (A150432)